IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

FRIDAY, THE 26TH OCTOBER 2007 / 4TH KARTHIKA 1929

OP.No. 34687 of 2002(D)

PETITIONER:

K.P.PURUSHOTHAMAN S/O. ANANDAN,
LAL VIHAR, MONTHAL, POST OLAVILAM,
TELLICHERRY TALUK.

BY ADV. SRI.T.A.RAMADASAN
SRI.A.K.ALEX
SRI.CIBI THOMAS

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
CHIEF SECRETARY, SECRETARIAT, TRIVANDRUM

2. WELFARE FUND INSPECTOR, TODDY WORKERS
WELFARE FUND BOARD, KANNUR.

3. CHIEF WELFARE FUND INSPECTOR,
TODDY WORKERS WELFARE FUND BOARD, TRIVANDRUM

4. E.K.PRAVEEN S/O. PRABHAKARAN,
KAVUMBHAGOM, TELLICHERRY.

5. K.A.SUDHAKARAN S/O. KRISHNAN,
THIRUVANGAD, TELLICHERRY.

6. SMT. P.K.USHA D/O. CHATHUKUTTY,
PATHIRIYAD, POST MAMBRAM, TELLICHERRY.

7. V.M.KUNHIRAMAN, S/O. KELAN,
POST PINARAYI, TELLICHERRY.

(.....2)

**8. JOSE PRAKASH, S/O. V.A.JOSE, IRITTY,
KANNUR DISTRICT**

**9. KEROTH KAIPLAKKAL MATHEW S/O.JOSEPH,
POST TALIPARAMBA, KANNUR DISTRICT**

**10. P.RAJESH S/O. RAJU, VADAKARA,
KOZHIKODE.**

**11. THE TAHSILDAR, (REVENUE RECOVERY),
TELLICHERRY.**

**12. KANNUR JILLA CHETHU THOZHILALI UNION,
(INTUC), REPRESENTED BY ITS SECRETARY, KANNUR.**

**BY ADV. SRI.RENIL ANTO, SC, KTWWF BOARD
GOVERNMENT PLEADER SRI.SALIM P.A.**

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 26/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP.No. 34687 of 2002(D)

ORDER ON CMP.NO.58691 OF 2002 IN OP.NO.34687 OF 2002-D.

DISMISSED.

26/10/2007. **Sd/- T.R.Ramachandran Nair, Judge.**

APPENDIX

Petitioner's Exhibits:-

P1: **Copy of the identity card issued by the concerned welfare fund inspector to the petitioner dtd.19/3/1997.**

P2: **Copy of the wage slip issued to the petitioner dtd.14/1/2002.**

P3: **Copy of the order of the 2nd respondent order No.X1-10-Tly./25/97-98 dtd.18/7/2000.**

P4: **Copy of the order of the 3rd respondent dtd.10/4/2001.**

P5: **Copy of the demand notice issued by the 11th respondent dtd.24/10/2000.**

P6 **Copy of the list (Mahzar) of articles seized by 11th respondent.**

P7: **Copy of the notice issued by the 11th respondent.**

P8: **Copy of the order passed by the Jt.Secretary to Govt. dtd.19/8/2002.**

P9: **Copy of the notice issued by the 11th respondent dtd.nil.**

Respondents' Exhibits:- **Nil.**

(true copy)

P.A. TO JUDGE.

Kvs/-

T.R.RAMACHANDRAN NAIR, J.

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O.P.No.34687 of 2002-D.

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Dated this the 26th day of October, 2007.

J U D G M E N T

The petitioner has approached this Court challenging the orders leading to Ext.P9. The petitioner has also sought for a further prayer to quash Exts.P3, P4, P5 and P7. The issue in this case concerns the affairs of toddy shop No.25 in the Excise Range, Thalassery. Respondents 4 to 10 had jointly participated in the auction to run 52 toddy shops in Thalassery Excise Range. It is stated that the 12th respondent Union was entrusted with the conduct of the said shops. The petitioner admits that he was a member of Desiya Chethu Thozhilali Union. But it is the case of the petitioner that he was only working as a sales man in the above toddy shop.

2. The petitioner was called upon to remit the amount towards welfare fund for the Abkari year 1997-98 as per Ext.P3. According to the petitioner, after the receipt of Ext.P3 he approached the union leaders and requested them to settle the matter and subsequently he filed an appeal also. The appeal was dismissed by Ext.P4. Again he was served with a demand notice by Ext.P5 and some of his movables were attached by the authorities under the Revenue Recovery Act. He approached the union leaders and

others to pay the arrears and thereafter approached this Court by filing OP.No.2175/2002. This Court directed the Chief Welfare Fund Inspector to forward the appeal filed by him to the Government and the Government was directed to dispose of the same within the time limit specified by this Court. Ext.P8 is the order passed by the Government.

3. The contention raised by the petitioner, substantially is that the union was conducting the shop and he was only a sales man in that shop. According to him, he was not a licensee of the shop and therefore there is no amount legally due from him towards the welfare fund.

4. The Government considered the matter in detail in Ext.P8 and the petitioner was heard also. A reading of Ext.P8 order shows that on 28/7/1999 notices were issued to several licensees of the Thalassery Range for assessing welfare fund contribution for the period 1997-98. In response to the above notices the licensees had filed statements and according to their statement toddy shop No.25 was entrusted with the petitioner herein through the Union. Based on that notice of enquiry was issued to the petitioner also. The petitioner appeared and submitted a statement denying the conduct of the shop by him. But at the same time he had admitted that he had paid wages to the employees and the kist and the welfare fund contribution deducted have been entrusted with the President of the Union. Even though he claimed that he was only a sales man, going by the statement of wages and

the welfare fund contribution filed by the trade union the name of the petitioner has been excluded along with another person K.P.Manoj. Again there was a statement filed by K.Shiju stating that the petitioner was conducting the shop and he was deducting the welfare fund contribution and the wages to the employees were also being paid by him. Therefore, the Government found that the petitioner's case that he was not conducting the shop is not correct. Accordingly the appeal was dismissed. It was also found that due enquiry was conducted by the Welfare Fund Inspector.

5. The learned counsel for the petitioner argued that the findings rendered by the Government in Ext.P8 and by the statutory authorities in the orders impugned are not correct and the petitioner cannot be treated as a licensee at all.

6. The said issue is only a question of fact and clearly the authorities have found against the petitioner on that aspect based on relevant materials. There is no contra evidence also to support his case. The enquiry has been conducted with notice to the petitioner and others and this Court will not be justified in upsetting a finding of fact in these proceedings. Therefore, I do not find any ground to interfere with the orders impugned.

7. The learned counsel for the petitioner requested for grant of easy instalments to remit the amount. The petitioner is hereby granted facility to pay the balance amount in ten equal monthly instalments starting

from 1-12-2007 onwards. If the amount is not paid as directed above, the respondents can proceed against him in accordance with law. Any amount paid by the petitioner pursuant to the interim order passed by this Court will be adjusted towards the total amount due.

8. Since the petitioner has got a case that he was conducting the shop on behalf of the Union, the dismissal of this Original Petition will not prejudice his legal right if any to proceed against them for the amount realised from him, in accordance with law.

The Original Petition is dismissed with the above observation. No costs.

T.R.RAMACHANDRAN NAIR, JUDGE.

Kvs/-